Supreme Court U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

HARRIET DIXON,

Petitioner,

versus

BOISE CASCADE CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an employee assigned responsibility by her employer for compliance with the Occupational Safety & Health Act (OSHA) who suffers retaliatory action culminating in discharge from her employment due to her refusal to violate applicable OSHA rules and regulations in the workplace may assert a private cause of action for retaliatory action pursuant to 29 U.S.C. § 660, which expressly forbids such conduct by an employer?

2. Whether the Fifth Circuit has erred as a matter of law in holding that there can be no private cause of action for an employer's violation of 29 U.S.C. § 660, despite the express prohibition in § 660 against such conduct?

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PETITION FOR WRIT OF CERTIORARI

Harriet Dixon respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 12, 1998.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is not reported. It is reproduced at Appendix A. The decision of the United States District Court for the Western District of Louisiana is reproduced at Appendix B. Neither court rendered separate reasons for judgment.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on November 12, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

29 U.S.C. § 660(c)(1) of the Occupational Safety & Health Act (OSHA) provides:

> No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act or has testified or is about

to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

STATEMENT OF THE CASE

A. Procedural History

The procedural history must begin with the initial complaint filed by Harriet Dixon with OSHA following Boise Cascade's threatened termination of her employment. After Harriet Dixon sought assistance and protection from OSHA and after Boise Cascade responded by in fact terminating her employment, Harriet Dixon submitted two separate requests to the Secretary of Labor, one individually and one through counsel retained in response to the termination, for a review of her termination by Boise Cascade. As of the anniversary date of her termination, Harriet Dixon had received no response to those requests. Confronting the potential effects of one year limitation statutes, Harriet Dixon filed this action in federal district court against her employer, Boise Cascade, complaining of the retaliatory action taken against her by her employer in violation of 29 U.S.C. § 660.

Boise Cascade responded to Harriet Dixon's allegation that her employment was terminated in response to Harriet Dixon's refusal to ignore and otherwise violate the requirements of OSHA with a Rule 12(b)(6) motion for dismissal. Boise Cascade's Rule 12(b)(6) motion argued the decision of the United States Court of Appeals for the Fifth Circuit in *George v. Aztec Rental Center Inc.*, 763 F.2d 184 (5th Cir. 1985), immunized Boise Cascade

from any private cause of action regardless of the facts or circumstances surrounding the action. The district court conceded that it was bound by the decision of the Fifth Circuit in *George v. Aztec Rental Center*. The Rule 12(b)(6) motion was granted and the action dismissed.[1]

On November 12, the United States Fifth Circuit Court of Appeals affirmed the district court's judgment, holding that, as a matter of law, there could be no private cause of action asserted against an employer for violation of the express prohibition against retaliatory action under 29 U.S.C. § 660. This petition followed.

B. Background Facts

On December 30, 1996 Boise Cascade terminated the employment of its Occupational Health Coordinator at its facility in DeRidder, Louisiana – Harriet Dixon. Boise Cascade had forewarned Harriet Dixon of the termination. In her position as the Occupational Health Coordinator, Harriet Dixon bore responsibility for monitoring and also reporting Boise Cascade's compliance – or failure to comply, with the requirements of the Occupational Safety & Health Act.

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[1] Harriet Dixon submitted a formal opposition to the motion for dismissal arguing against the holding of the Fifth Circuit in *George v. Aztec Rental Center, supra in text*. Nonetheless, counsel for Harriet Dixon frankly conceded to the district court that the stated holding of the Fifth Circuit in *George v. Aztec Rental Center* essentially commanded the district court to dismiss the action. As a result, the district court's opinion is limited to a concise acknowledgment of the impact of the holding in *George v. Aztec Rental Center.*

Harriet Dixon successfully held a nearly identical position for many years with a keen competitor of Boise Cascade, International Paper, and undertook the Boise Cascade position with every intention of achieving a similar record of satisfaction and success among each of the entities with whom she would interact: OSHA; Boise Cascade; and, certainly not least of all, the employees whose safety and well being fell squarely within the scope of Harriet Dixon's job responsibilities. Although Harriet Dixon's job performance was exactly as she expected, her employer's response was anything but as expected. Boise Cascade demanded that Harriet Dixon refrain from full reporting to OSHA, that she limit or alter record keeping mandated by OSHA, and that she abide by Boise Cascade's own self-serving and self-made rules rather than the applicable OSHA rules and regulations.

Harriet Dixon resisted, refusing to violate OSHA's rules and regulations that directly guided her work at Boise Cascade. Harriet Dixon's refusal to accede to the demands of her employer generated an ultimatum from Boise Cascade: immediately alter her actions or face termination. Harriet Dixon still refused. And Boise Cascade terminated her employment.

There is more to the factual background between the parties to this action. In the midst of the threatened retaliatory action by Boise Cascade, Harriet Dixon contacted OSHA seeking help and protection. OSHA promised confidentiality. How or even whether that promise was honored is not known largely as a result of the quick dismissal of this action. But Boise Cascade's termination fell on the immediate heels of Harriet Dixon's contact with OSHA. Regardless, this much is certain: Harriet

Dixon's effort to find sanctuary with OSHA failed; Boise Cascade made good on its threat; and Harriet Dixon lost her job.

Harriet Dixon then submitted a complaint to the Secretary of Labor. And Harriet Dixon retained counsel. A second written request for action was timely submitted by counsel to the Secretary of Labor on behalf of Harriet Dixon. As of December 30, 1997, Harriet Dixon had received no response from OSHA and this action was filed.[2]

REASONS FOR GRANTING THE WRIT

1. **The framework established by the Occupational Safety & Health Act depends on a scheme of self reporting by the employer and thus also depends on the ability of the individual employee assigned responsibility for compliance with OSHA to work without improper interference by the employer, and to also have an appropriate remedy responsive to any improper interference by the employer.**

The Occupational Safety & Health Act expects that the individual employee assigned responsibility by the

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[2] After the defendant's motion to dismiss was granted and after Harriet Dixon had submitted her appeal to the Fifth Circuit and filed her original appellate brief, counsel for Boise Cascade discovered a copy of a ruling by the Secretary of Labor responsive to the Dixon complaint. Made aware of that ruling for the first time, Harriet Dixon sought to have the proceedings remanded to the district court to supplement the record. That motion to remand, opposed by Boise Cascade, was denied by the Fifth Circuit.

employer for OSHA compliance work free of improper interference by the employer. The scheme and strategy of the Occupational Safety & Health Act hinges on rules and regulations that require an employer to self report. Certainly the scheme of the Occupational Safety & Health Act includes governmental oversight. But at the heart of the system is the concept that the employer must self report to OSHA thereby allowing OSHA to review, consider, and evaluate the performance and compliance of each employer. In turn, the self reporting aspect of the Occupational Safety & Health Act depends on the proper job performance of the individual employee or employees directly assigned responsibility for OSHA reporting.

Simply put, the Occupational Safety & Health Act in its day to day operation requires that the individual employee assigned OSHA compliance responsibility be free to do his or her job. If not and if the employer improperly interferes with that employee's job performance, there must be a substantive remedy for redress. Only then can the Act function as intended.

The absolute need for sanctions against inappropriate employer interference is a necessary protection against an employer that would otherwise improperly force its will upon the employee assigned responsibility for OSHA compliance. The Act itself recognizes this basic but critical principle in its express prohibition of retaliatory action by an employer. Certainly this prohibition necessarily includes an employee assigned responsibility for OSHA compliance.

2. Contrary to the rulings of the Sixth and Fifth Circuits, the Act itself does not foreclose a private cause of action in favor of the individual employee.

The United States Courts of Appeals for the Sixth Circuit (*Taylor v. Brighton Corporation*, 616 F.2d 256 (6th Cir. 1980)) and the Fifth Circuit (*George v. Aztec Rental Center, Inc.*, 763 F.2d 184 (5th Cir. 1985)) have concluded that there can be no private remedy for retaliatory action in violation of § 660. Nonetheless, neither the Act generally nor § 660 specifically forecloses a private remedy.

Section 660 contains three subsections, addressing: first, the right of an **employer** to seek judicial review of an adverse ruling or order; second, the right of the **Secretary of Labor** to seek judicial review or enforcement of an order; and finally an express prohibition against discharge or discrimination directed toward an employee exercising a right under the Act.[3]

Subsection (c) of § 660 itself includes three subparts. The specific language utilized in those three subparts is significant. Subpart one absolutely prohibits discharge of or discrimination against an employee on the basis of any action pursuant to the Act. The language is mandatory. "No person **shall** discharge or in any manner discriminate" against an employee on the basis of action taken by the employee pursuant to the Act.

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[3] It is ironic indeed if Congress intended through § 660 to provide both the employer and the Secretary of Labor with access to the courts but yet chose to deny access to the courts for the employee intended to be protected by § 660(c)(1)'s express prohibition against retaliatory action. Yet that is the exact conclusion reached by *Taylor* and *George*.

Subpart two provides one limited remedy. The remedy is, however, not mandatory. "Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection **may**" submit a complaint to the Secretary of Labor.[4]

The final subpart of subsection (c) of § 660 merely establishes a deadline for the Secretary of Labor to act upon a complaint submitted by an aggrieved employee pursuant to subpart two of subsection (c).

Section 660 of the Act does not prohibit a private remedy. Section 660 does absolutely prohibit discharge or discrimination against an employee who initiates a complaint or other action pursuant to the Act. And the language adopted by Congress in subpart two does not provide that the stated remedy – submission of a complaint to the Secretary of Labor, is an exclusive remedy. To the contrary, Congress chose to alter the mandatory language adopted for subpart one ("No person shall discharge or in any manner discriminate. . . . ") for optional language ("Any employee. . . . may. . . . file a complaint with the Secretary. . . . ").

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[4] Notably, § 660(c)(2) allows an employee who believes he or she is aggrieved by retaliatory action in direct violation of § 660(c)(1) only 30 days to submit a complaint to the Secretary of Labor. If there can be no private remedy as the lower courts have held, then the window of opportunity for the only remedy available to the aggrieved employee is limited to that 30 day period.

In sum, taken as a whole the language of § 660(c) does not foreclose a private remedy. Instead, the language of subsection (c) of § 660 at the very least allows for a private remedy.

3. A private remedy for retaliatory action in violation of § 660 is proper under the *Cort v. Ash* factors which determine whether such a remedy exists even in the absence of an express clause recognizing a private remedy in the statute itself.

Analysis of the relevant factors to determine whether a private remedy exists endorses a private remedy under § 660. Those factors, listed in *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), ask:

- Whether the plaintiff is a member of the class for whose benefit the statute was enacted?
- Whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?
- Whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?
- Whether the cause of action is one traditionally left to state law or exists in an area that is a concern of the states such that it would be inappropriate to infer a private remedy based solely on federal law?

Cort v. Ash, supra, 95 S.Ct. at 2087.

Each of these factors is addressed in the subsequent discussion. However, it is appropriate to recognize at the outset that, of these four factors, only one presents a

substantive issue for discussion – legislative intent. The issues of class membership, consistency with underlying purposes of the legislative scheme, and areas of state concern are easily resolved – and easily resolved in favor of a private remedy.

Class Membership

A private remedy to enforce the prohibition against discharge or discriminatory action in violation of § 660 would recognize a right in favor of the aggrieved employee and thereby offer protection to a class of persons for whose benefit the Act was clearly intended – employees who work under and depend on the protection afforded by the Occupational Safety & Health Act. Harriet Dixon herself is an employee falling under the protection of the Act and thus necessarily a person sought to be protected by the prohibition in § 660(c) against discharge or discriminatory action. As such, Harriet Dixon is a member of the class for whose benefit the statute was enacted.

Moreover, Harriet Dixon, as the employee assigned responsibility for OSHA compliance, is the primary employee upon whom other employees must depend for the protection intended under the Act. In short, of all persons for whose benefit § 660(c)'s prohibition against retaliatory action might have been intended, Harriet Dixon's position is truly a linchpin to OSHA's protective umbrella for all employees at her workplace.

Legislative Intent

Under the totality of the relevant criteria, there is not sufficient or proper evidence of legislative intent to foreclose a private remedy for violation of the prohibition in § 660(c) against retaliatory action. The Sixth Circuit in *Taylor v. Brighton Corporation*, 616 F.2d 256 (6th Cir. 1980), addressed this question and concluded that there was sufficient legislative intent to foreclose a private remedy. The Fifth Circuit in *George v. Aztec Rental Center, Inc.*, 763 F.2d 184 (5th Cir. 1985) adopted the analysis as well as the conclusion of the Sixth Circuit in *Taylor*. But *Taylor* improperly concluded that the mere failure of Congress to include a specific provision granting a private remedy accompanied by the creation of an enforcement provision through the Secretary of Labor necessarily excludes a private remedy. And *Taylor* essentially neglects other principles of statutory construction and interpretation, including the other three *Cort v. Ash* factors, that support a private remedy.

Taylor reviews the limited legislative history for § 660 and concludes that the evidence of legislative intent, although admittedly limited to circumstantial evidence, tends to exclude a private remedy. *Taylor* analogies itself to the decision of this Court in *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979), stating that:

> . . . the legislative history of OSHA § 11(c) [now § 660(c)] suggests that Congress intended not to allow private suits to redress retaliatory discrimination. The present case is like TAMA v. Lewis, supra: "what evidence of intent exists in this case, circumstantial though it be, weighs

> against the implication of a private right of action."

Taylor v. Brighton Corporation, supra, 616 F.2d at 263.

But the mere suggestion of legislative intent found in the *Taylor* analysis should not be sufficient to overcome the stronger arguments favoring a private remedy. First, the evidence of legislative intent on the precise question of a private remedy is, as acknowledged in *Taylor,* vague and nonspecific at best. Second, the *Taylor* analysis, accomplished in 1980, should not be persuasive because its inquiry is improperly limited only to one of the four *Cort v. Ash* factors and then relies on unclear evidence of legislative intent. As a result, *Taylor* ignores a broader, better perspective to determine the existence of a private remedy. That is, *Taylor* ignores the contemporary legal context that must have impact in determining whether a private remedy exists. This Court's recent admonition in *Morse v. Republican Party of Virginia,* 517 U.S. 186, 116 S.Ct. 1186, 134 L.Ed.2d 347 (1996) is apropos:

> The District Court dismissed appellants' claim under § 10 of the Act because that section only authorizes enforcement proceedings brought by the Attorney General and does not expressly mention private actions. While that ruling might have been correct if the Voting Rights Act had been enacted recently, it fails to give effect to our cases holding that our evaluation of congressional action "must take into account its contemporary legal context."

Morse v. Republican Party of Virginia, supra, 116 S.Ct. at 1211, citing *Cannon v. University of Chicago,* 441 U.S. 677, 698-99, 99 S.Ct. 1946, 1958, 60 L.Ed.2d 560 (1979). And a

"contemporary legal context" mandates that all of the relevant factors – factors that favor the existence of a private remedy, be incorporated into the analysis.

Taylor needlessly and improperly seizes upon a single point – the absence of an express congressional declaration of a private remedy – to conclusively and forever exclude a private remedy. In so doing, *Taylor* ignores other relevant criteria. And the danger of the *Taylor* analysis is that it tends to always answer itself. That is, if undue weight is placed on the single consideration examined in *Taylor* – the mere absence of express language creating a private remedy, then the question of whether a private remedy exists in the absence of express language declaring a private remedy will seemingly always be answered in the negative. Through this process, *Taylor* erroneously concludes that there can be no private remedy under § 660, and the decision of the United States Court of Appeals for the Fifth Circuit in *George v. Aztec Rental Center, supra* errantly follows *Taylor*.

Finally, the *Taylor* analysis is faulty because it can effectively negate the broader purpose and scheme of the Occupational Safety & Health Act. Surely if an employer may pressure the exact employee assigned responsibility for OSHA compliance to vary significantly from applicable OSHA regulations, then there can be little realistic hope for the proper administration of the Act. In turn, this necessarily means that the welfare and the safety of the worker who the Act is ultimately intended to protect will inevitably be placed in jeopardy. But such a conclusion is neither necessary nor appropriate. Just as this Court recognized in *Morse v. Republican Party of Virginia, supra*, "achievement of the Act's laudable goal could be

severely hampered . . . if each citizen were required to depend solely on litigation instituted solely at the discretion" of the applicable federal agency.[5] But this end is unnecessary. A search for congressional intent and a parallel effort to further the congressional intent should not lead to an eradication of the underlying purpose of the legislative scheme itself. And it need not here. Section 660 should allow for private enforcement.

The Underlying Purposes of the Legislative Scheme

As noted, the legislative scheme adopted by Congress through the Occupational Safety & Health Act is dependent on self reporting. In adopting these provisions, Congress apparently sought to buttress the effectiveness of the self reporting principle through its adoption of an absolute prohibition against any adverse action by an employer against an employee who acts pursuant to OSHA or seeks the protection of OSHA.

As also noted, the availability of a private remedy in favor of an aggrieved employee to complain of and respond to retaliatory action in the workplace is not only consistent with the underlying scheme but is in truth essential to the proper functioning of the legislative scheme. Simply stated, a decision to deny a private remedy is a decision exactly opposite to the underlying purposes of the legislative scheme. Yet that is the decision and direction commanded by current case law.

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[5] 116 S. Ct. at 1211, citing *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969).

State Law Concerns

The issues presented in this proceeding center exclusively on the administration and functioning of the Occupational Safety & Health Act. Although the proper functioning of the Act perhaps serves an individual state's interest in the welfare of its citizenry, there is no comparable state legislative scheme. Instead, this is an area that is primarily of federal concern – not state concern. As such, there are no state law regulatory provisions nor any state law concerns that interfere with the existence of a private remedy to enforce the mandatory federal prohibition against retaliatory action.

4. The Secretary of Labor long ago conceded that it is not possible to administer the claims of retaliatory action submitted pursuant to § 660(c) and, on that basis, argued for a private cause of action thereby supporting Harriet Dixon's position in this petition.

The Secretary of Labor has long ago concluded that the Department of Labor is without adequate resources and personnel to address complaints that may be submitted to the Secretary of Labor pursuant to § 660 of the Act. In *Taylor v. Brighton Corporation, supra,* the Secretary of Labor submitted through the Department of Labor an *amicus* brief urging the Sixth Circuit Court of Appeals to recognize a private remedy. *Taylor v. Brighton Corporation,* 616 F.2d 256, 263 (6th Cir. 1980).

Not only did the Secretary of Labor argue in favor of a private remedy as early as 1979 in the context of the *Taylor* proceeding, the Secretary of Labor also predicted at

that time that the number of complaints anticipated pursuant to § 660 would "increase dramatically" over the coming years. *Taylor, supra,* 616 F.2d at 263.

It is true, as recognized by *Taylor,* that the position of the Secretary of Labor cannot be dispositive. Nonetheless, the Secretary's position absolutely supports a private remedy and, just as importantly, the Secretary's position is consistent with the additional criteria outlined in this petition. And indeed *Taylor*'s complete rejection of the Secretary of Labor's position on this issue is contrary to instruction provided by this Court. A declaration by the federal agency assigned enforcement responsibilities under the statute in question that there must be a private remedy is both relevant and persuasive. *Morse v. Republican Party of Virginia, supra,* 116 S.Ct. at 1212. The need to ensure that the underlying purposes of the legislation endure requires at a minimum that the federal agency designated by Congress for oversight and enforcement be heard in the administration of the legislation.

5. **The decisions of the Sixth Circuit in *Taylor v. Brighton Corporation* and the Fifth Circuit in *George v. Aztec Rental Center, Inc.* silently but steadily erode the legislative scheme of the Occupational Safety and Health Act by forcing the very workers Congress intended to protect through the Act to suffer needless and unacceptable risks without adequate recourse or remedy.**

Taylor and *George* both specifically hold without any limitation at all that there can be no private remedy for an employer's purposeful violation of the prohibition in § 660 of the Occupational Safety & Health Act. Although

never discussed, the impact of these two decisions is to so severely limit the remedy available to an employee who suffers retaliatory action that there is ultimately almost no remedy at all. As noted, an aggrieved employee is allowed only thirty days to submit a complaint to the Secretary of Labor. Once those thirty days have passed, there is, under the holdings of *Taylor* and *George*, absolutely no remedy or method of redress available at all to that aggrieved employee. If the employee should discover that he or she is entitled to submit a complaint to the Secretary of Labor within that thirty day period (and there is no basis to reasonably expect that discovery to occur), then the employee is entitled to whatever relief or remedy the Secretary of Labor might offer. But the Secretary of Labor acknowledged twenty years ago that the complaints that do manage to arrive timely cannot be handled effectively by the Secretary, and that the number of complaints were steadily increasing.

In the end, *Taylor* and *George* suggest that Congress, in enacting the Occupational Safety & Health Act, intended to:

- Create a broad, far reaching set of federal regulations designed to protect the health and welfare of American workers.
- Adopt a legislative scheme or strategy that depends on the employer to report relevant information to OSHA.
- Yet leave the supposedly protected employee whose employer simply refuses to abide by the applicable OSHA rules and regulations with little, if any, remedy or method of redress.

It is not reasonable to assign to Congress such a skewed decision making process. And it is certainly not reasonable to assume that Congress created a sophisticated set of rules and regulations to protect workers but yet intended that protection to be potentially no more than an empty promise. Yet the *Taylor* and *George* analyses reached that very conclusion – and those decisions reached that conclusion based solely on circumstantial evidence of "legislative intent" that is admittedly unclear. Simply put, if Congressional intent is the guiding light, then that light must lead to a meaningful and substantive remedy to the very employees whose safety and well being is the ultimate goal of the Occupational Safety & Health Act. The *Taylor* and *George* analyses reach a contrary and in fact opposite conclusion. Those decisions should be overruled.[6]

CONCLUSION

The safety and welfare of the American worker is an issue that deserves as much weight and deference as any

[6] There are a number of factual distinctions that could be employed to distance both *Taylor* and *George* from the claim asserted by Harriet Dixon. Indeed, it could be argued that the holdings of *Taylor* and *George* are overly broad given the specific facts presented. And neither *Taylor* nor *George* involve the specific employee assigned responsibility for OSHA compliance. But the right to a substantive and meaningful private remedy in favor of an aggrieved employee should not be limited to a select group, but instead should extend to any employee who suffers retaliatory action by his or her employer. As such, those distinctions are not argued.

other issue that might be presented to this Court. Admittedly, arguments about a private remedy under legislative provisions such as the Civil Rights Act or the Voting Rights Act might at first glance seem to bear more importance. But the importance that must accompany the right of an individual worker to be protected from unnecessary and undue risks in the workplace deserve a degree of importance on par with an individual's civil rights and his or her right to vote. The issue presented is ultimately one of the most basic human rights of health and welfare.

Harriet Dixon petitions this Court to address for the first time the existence of a private remedy for retaliatory action in violation of the Occupational Safety & Health Act. The circumstances of Harriet Dixon's claim could not be more severe. It is a claim brought by an OSHA compliance designee who has been terminated by her employer for her steadfast refusal to violate the applicable rules and regulations of the Occupational Safety & Health Act. Stated otherwise, Harriet Dixon has refused to place either her own personal interest in her job or the demands of her employer above her duty to oversee the health and welfare of her co-workers. And for this Harriet Dixon has suffered severe consequences.

The analyses in *Taylor* and *George* allow if not invite an employer to frustrate and even ignore the demands of the Occupational Safety & Health Act. *Taylor* and *George* leave the aggrieved employee with little, if any, remedy or method of redress. Certainly *Taylor* and *George* have a chilling effect on any employee who might seek to assert the rights and remedies seemingly granted that employee by Congress through the Occupational Safety & Health Act. But *Taylor* and *George* do much more than create a

chilling effect. The blanket holdings espoused by *Taylor* and *George* ultimately frustrate the very purpose of the legislative scheme adopted by Congress in the Occupational Safety & Health Act. Moreover, the inevitable import of those decisions is to relegate the issue of the health and welfare of the American worker to a position of secondary importance. In that manner, a refusal to allow a private remedy in favor of an aggrieved employee who suffers retaliatory action because he or she sought to invoke a right seemingly granted by Congress in the Occupational Safety & Health Act creates what is a cancer in the American workplace. And that cancer has been allowed to flourish for twenty years now. Harriet Dixon turns to this Court, and asks that the petition for certiorari be granted for the reasons stated.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 98-30381
Summary Calendar

HARRIET DIXON,

Plaintiff-Appellant.

VERSUS

BOISE CASCADE CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(97-CV-2508)

November 12, 1998

Before DAVIS, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

The district court correctly concluded that the resolution of the issue in this case is controlled by this court's decision in *George v. Aztec Rental Center, Inc.*, 763 F.2d 184 (5th Cir. 1985).

AFFIRMED.

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

HARRIET DIXON	:	DOCKET NO. 97-2508
VS.	:	JUDGE TRIMBLE
BOISE CASCADE CORPORATION	:	MAGISTRATE JUDGE WILSON

JUDGMENT

(Filed Mar. 24, 1998)

Based upon the Fifth Circuit's holding in *George v. Aztec Rental Center, Inc.*, 763 F.2d 184 (5th Cir. 1985) which held that there is no private cause of action for an employer's violation of 29 U.S.C. § 660, the defendant's 12(b)(6) Motion to Dismiss IS GRANTED.

Accordingly, IT IS ORDERED that this case be DISMISSED WITH PREJUDICE.

Lake Charles, Louisiana, this 24th day of March, 1998.

/s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES
DISTRICT COURT